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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,627	10/30/2003	Andrew W. Marsden	20341-72631	7341

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INDIANAPOLIS, IN 46204

EXAMINER

LIEU, JULIE BICHNGOC

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,627

Applicant(s)

MARSDEN ET AL.

Examiner

Julie Lieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-32 is/are allowed.
- 6) ☒ Claim(s) 1,2,11-14,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 3-10,15,16 and 19-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to Applicant's amendment filed January 17, 2006.

Claim 1 has been amended.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 1 and 11-13 are rejected under 35 U.S.C. 103(a) as being anticipated by Knoedler et al. (US Patent No. 5,280,635).

Claim 1:

Knoedler et al. discloses a monitor for sensing and transmitting sounds in a baby's vicinity, comprising:

- a. a housing 8, the housing enclosing acoustical means 34 and electrical means (transmitter) for, respectively, sensing and transmitting the sounds; and
- b. the monitor being mountable on a support by straddling the support with the spaced-apart portions 12 and 72 of the housing.

Though the reference fails to disclose two substantially spaced-apart legs, the portions 12 and 72 function as spaced apart legs for straddling the support. It appears that portion 12 and 72 are not integral. However, lacking any criticality as to why the legs must be integral, how it

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would produce any unexpected result, or would solve any stated problems, it appears that portion 12 and 72 of the housing 8 in Knoedler functions equally the same as the claimed legs. "Lacking any criticality, to make prior art parts integral does not make the claimed invention patentable over the prior art." (In re Larson, 144 USPQ 347).

Claim 2:

The housing in Knoedler is not a U shape. Nonetheless, lacking any criticality as to why it must be this shape how it would produce any unexpected result, or would solve any stated problems, it appears that the housing of the device in Knoedler functions equally well as if it were U-shape. "Lacking any criticality, changing the form or shape of the prior art parts does not make the claimed invention patentable over the prior art." (In re Dailey, 149 USPQ 47)

Claim 11:

The acoustical means 34 includes a microphone to detect the sounds.

Claim 12:

The electrical means in the Knoedler device includes at least one device to convert and transmit the sounds to a remotely located receiver.

Claim 13:

The transmitter in Knoedler includes at least one battery 48 in the housing.

Claim 14:

It appears that the battery in Knoedler is not rechargeable. Nonetheless, the use of rechargeable battery is very old and conventional in the art. Thus, it would have been obvious to one skilled in the art to use rechargeable battery in the device of Knoedler because it would be economical to use rechargeable battery in the long run.

Claim 18:

Knoedler fails to disclose an indicator light showing the power status of the battery. Nonetheless, it would have been obvious to one skilled in the art to add a battery indicator light in the Knoedler device because it is very conventional to indicate the battery status to the user.

5. Claims 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knoedler et al. (US Patent No. 5,280,635) in view of Thompson (US Application 2005/0184877).

Claim 17:

Knoedler fails to disclose a switch and the ability to use the switch to allow for transmission frequency selection. However, Thompson teaches a baby-monitoring device that includes a switch 52 for selecting different frequencies of the transmitter. In light of this teaching, one skilled in the art would have readily recognized incorporating this feature in to the system of Knoedler because it is advantageous to allow user to select the transmission frequency.

Allowable Subject Matter

6. Claims 23-32 are allowed.

7. Claims 3-10, 15-16, and 19-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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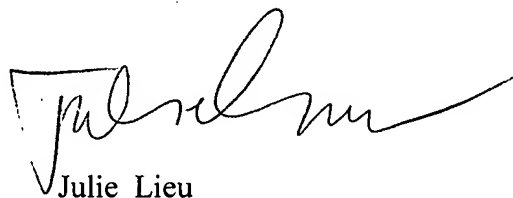
Remarks

8. The examiner regrets to continue to reject claim 1 as amended, though the examiner suggested the change. The reason is set forth in the rejection after considering *In re Larson*, 144 USPQ 347 and reviewing the specification for criticality of the legs and shape of the housing of the device. There was not particular criticality pointed out in the specification regarding the legs and the shape of the housing.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on MaxiFlex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik can be reached on 571-272-3068. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie Lieu
Primary Examiner
Art Unit 2612

Mar 28, 06